

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO.

75-1273

B
P/S

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,

PLAINTIFF-APPELLEE

v.

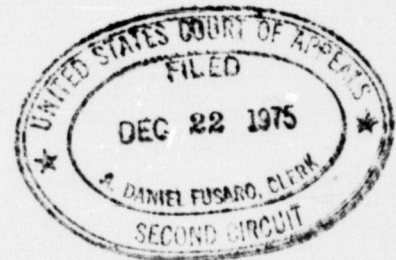
MICHAEL MARCIANO,

DEFENDANT-APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO APPELLANT'S BRIEF

COUNSEL FOR DEFENDANT-APPELLANT
LAW OFFICES OF KENNETH R. CLAUDAT
BY: WILLIAM M. SCHREIBER
574 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306
(201) 420-0858



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PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

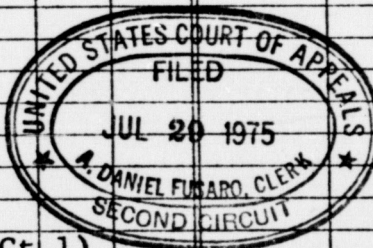
JUDGE BONSAI

75 CRIM. 402.

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Steven A. Schatten, AUSA.
1. CHARLES COPPERS, a/k/a "C.J."-1&2	791-9154
2. LEON ROGERS-1&4	
3. MICHAEL MARCIANO-1, 3&5	
4. THOMAS CARROLL-1, 3&5	
5. VINCENT, MC CLUSKEY-1, 3&5	
	For Defendant:

(01) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed 2 43	Marshal				
Violation	Docket fee				
Title 18					
Sec. 371, 659					
Consp. to commit interstate theft. (Ct. 1)					
Theft from interstate shipment. (2-5)					
(Five Counts)					



DATE	PROCEEDINGS
4-17-75	Filed indictment. (Superseding 74Cr1002 and referred to Bonsal, J.)
04-18-75	Filed affdvt. for writ of habeas corpus ad testificandum for Carlton Boyd. ret. 4-21-75.
04-22-75	Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for Vincent McCluskey ret. 4-29-75.
04-22-75	Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for Thomas Carroll ret. 4-29-75.
05-27-75	Jury trial begun before Judge Bonsal as to defts. L. Rogers, M. Marciano.
05-28-75	Trial cont'd.
05-29-75	Trial cont'd.
05-30-75	Trial cont'd. and concluded. Jury verdict defts. Rogers & Marciano guilty. Pre-sentence reports ordered. 7-14-75 set for sentence. Bail cont'd. Bonsal, J.

DATE	PROCEEDINGS
06-23-75	Filed Govt.'s request to charge.
06-23-75	Filed Govt.'s suppl. requests to charge.
06-23-75	Filed Govt.'s memo. of law on admissibility of prior similar acts.
07-14-75	Filed deft.'s notice of appeal from judgment docketed 7-14-75. mailed notices "Leave to appeal in forma pauperis is granted." Bonsal, J.
07-18-75	Filed CJA 20 approval of payment of fees of Lawrence Levner. Bonsal, J. (for deft. L. Rogers) issued copies CJA Clerk
07-14-75	LEON ROGERS-(atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of THREE (3) YEARS on each of counts 1 and 4, to run concurrently with each other. Sentence is stayed pending appeal. Bail pending appeal fixed in the amount of \$25,000. PRB. Bonsal, J. issued all copies
7-14-75	MICHAEL MARCIANO(atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of NINE (9) MONTHS on count 1. Imposition of sentence on counts 3 and 5 is suspended. Deft. is placed on probation for a period of THREE (3) YEARS, on each count, to commence upon expiration of confinement, subject to the standing probation order of this Court. Probation on counts 3 and 5 to run concurrently with each other. Bail fixed at \$10,000. pending appeal. Bonsal, J. issued all copies
7-17-75	Filed transcript of record of proceedings, dated May 27, 28, 29, 30, 1975.
07-21-75	Filed deft. Michael Marciano's notice of appeal from judgment of July 14, 1975. mailed copies to U.S. Atty. and deft. on 7-22-75.

A TRUE COPY

RAYMOND E. BURCHETT, Clerk

By

Deputy Clerk

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INDICTMENT (Filed April 17, 1975) (pp. 3a to 10a)

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 CRIM. 402

-----x
UNITED STATES OF AMERICA :

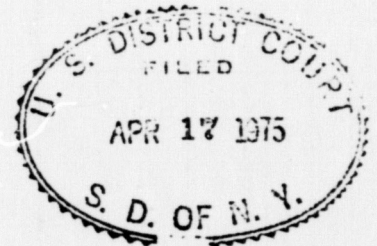
- v - :

INDICTMENT

CHARLES COPPERS, a/k/a "C.J.," :
LEON ROGERS, MICHAEL MARCIANO, ✓ :
THOMAS CARROLL and VINCENT :
MC CLUSKEY, :

S. 75 Cr.

Defendants. :
-----x



COUNT ONE

The Grand Jury charges:

1. From on or about the 15th day of August, 1971, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together, and with each other, and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 659 and 2.

2. It was part of said conspiracy that CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, and certain of their co-conspirators would unlawfully, wilfully and knowingly steal and take and carry away from a motor truck, with intent to convert to their own use, goods of a value greater than \$100 which were moving as, which were part of, and which constituted an interstate shipment of freight express.

3. It was further a part of said conspiracy that CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, and certain of their co-conspirators would unlawfully, wilfully and knowingly take, carry and deliver said goods of a value greater than \$100 to defendants MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY.

4. It was further part of said conspiracy that defendants MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY would unlawfully, wilfully and knowingly buy, receive, have in their possession, sell

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and dispose of the aforesaid goods of a value greater than \$100, knowing said goods to have been stolen.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others, were committed in the Southern District of New York, and elsewhere:

1. In or about December 1972, CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd and James Dixon travelled from New York City to the Two Guys Bar in North Bergen, New Jersey.
2. In or about December, 1972, Carlton Boyd talked with MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY at the Two Guys Bar in North Bergen, New Jersey.
3. In or about December, 1972, Carlton Boyd had a telephone conversation with MICHAEL MARCIANO.
4. On or about the 15th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd and James Dixon travelled in an automobile in downtown Manhattan in New York City.

5. On or about the 15th day of December, 1972, in downtown Manhattan in New York City, Carlton Boyd, carrying a gun, and James Dixon entered an Arrow Transportation Company motor truck and ordered the driver out of the motor truck.

6. On or about the 15th day of December, 1972, in downtown Manhattan in New York City, Carlton Boyd and James Dixon placed the truck driver in the back seat of an automobile.

7. On or about the 15th day of December, 1972, Carlton Boyd and James Dixon travelled around New York City with the truck driver in the back seat of the automobile.

8. On or about the 15th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.," drove the Arrow Trans-

portation Company motor truck in downtown Manhattan in New York City.

9. On or about the 15th day of December, 1972, Carlton Boyd talked on the telephone with MICHAEL MARCIANO.

10. On or about the 17th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.", Carlton Boyd and James Dixon sat in an automobile in the vicinity of 125th Street and the West Side Drive in Manhattan in New York City.

11. On or about the 17th day of December, 1972, THOMAS CARROLL and VINCENT MC CLUSKEY travelled in an automobile to the vicinity of 125th Street and the West Side Drive in Manhattan in New York City.

12. On or about the 17th day of December, 1972, in the vicinity of 125th Street and the West Side Drive in Manhattan in New York City, THOMAS CARROLL threw a bag containing \$3,600 into an automobile in which CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd, and James Dixon were sitting.

13. On or about the 22nd day of January 1973, LEON ROGERS, Carlton Boyd and James Dixon travelled in an automobile in downtown Manhattan in New York City.

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14. On or about the 22nd day of January, 1973 in downtown Manhattan in New York City, LEON ROGERS and Carlton Boyd entered a Connecticut Seafood Company motor truck with guns and ordered the driver out of the motor truck.

15. On or about the 22nd day of January, 1973, in downtown Manhattan in New York City, LEON ROGERS and Carlton Boyd placed the truck driver in an automobile.

16. On or about the 22nd day of January, 1973, Carlton Boyd and James Dixon travelled in New York City and New Jersey with the truck driver in the back seat of the automobile.

17. On or about the 22nd day of January, 1973, LEON ROGERS drove the Connecticut Seafood Company motor truck from downtown Manhattan in New York City to New Jersey.

18. On or about the 22nd day of January 1973 in New Jersey, Carlton Boyd had a telephone conversation with MICHAEL MARCIANO.

19. On or about the 22nd day of January, 1973, THOMAS CARROLL drove the Connecticut Seafood Company motor truck in New Jersey.

20. On or about the 25th day of January, 1973, LEON ROGERS, Carlton Boyd and James Dixon sat in an automobile in the vicinity of 177th Street and Broadway in Manhattan in New York City.

21. On or about the 25th day of January, 1973, THOMAS CARROLL and VINCENT MC CLUSKEY travelled in an automobile to the vicinity of 177th Street and Broadway in Manhattan in New York City.

22. On or about the 25th day of January, 1973, in the vicinity of 177th Street and Broadway in Manhattan in New York City, LEON ROGERS, Carlton Boyd and James Dixon received approximately \$5,000 from THOMAS CARROLL and VINCENT MC CLUSKEY.

(Title 18, United States Code, Section 371.)

The Grand Jury further charges:

On or about the 15th day of December, 1972, in the Southern District of New York, CHARLES COPPERS, a/k/a "C.J.," the defendant, unlawfully, wilfully and knowingly, and with intent to convert to his own use, did steal, take and carry away from an Arrow Transportation Company motor truck goods of a value greater than \$100.00, to wit, 645 cases of "Adria" canned hams, which were moving as, which were a part of, and which constituted an interstate shipment of freight and express.

(Title 18, United States Code, Sections 659 and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 15th day of December, 1972, in the State of New Jersey, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did buy, receive and have in their possession goods of a value greater than \$100, to wit, 645 cases of "Adria" canned hams, which had been unlawfully stolen, taken and carried away from a motor truck in interstate commerce in the Southern District of New York, knowing the said goods to have been stolen and unlawfully taken and carried away from said motor truck.

(Title 18, United States Code, Sections 659 and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 22nd day of January, 1973 in the Southern District of New York, LEON ROGERS, the defendant, unlawfully, wilfully and knowingly, and with intent to convert to his own use, did steal, take and carry away from a Connecticut Seafood Company motor truck goods of a value greater than \$100, to wit, 20,000 pounds of assorted frozen fish, which were moving as, which were a part of, and which constituted an interstate shipment of freight and express.

(Title 18, United States Code, Sections 659 and 2.)

The Grand Jury further charges:

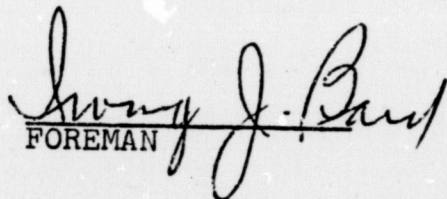
On or about the 22nd day of January, 1973, in the State of New Jersey, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, willfully and knowingly did buy, receive and have in their possession goods of a value greater than \$100, to wit 20,000 pounds of assorted frozen fish, which had been unlawfully stolen, taken and carried away from a motor truck

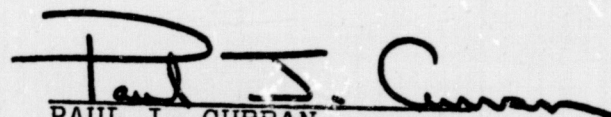
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in interstate commerce in the Southern District of New York, knowing the said goods to have been stolen and unlawfully taken and carried away from said motor truck.

(Title 18, United States Code, Sections 659 and 2.)


FOREMAN


PAUL J. CURRAN
United States Attorney

United States of America vs.

United States District Court for

DEFENDANT

MICHAEL MARCIANOSouthern District of New York

DOCKET NO. ➔

75 Cr. 402**JUDGMENT AND PROBATION/COMMITMENT ORDER**

AO 245 (6/74)

In the presence of the attorney for the government:
the defendant appeared in person on this date ➔

MONTH	DAY	YEAR
7	14	'75

UNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSELKenneth Claudat

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY.

JUL 14 1975

CL. OF N. Y.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly buying, receiving, and having in his possession goods of a value greater than \$100.00 which had been unlawfully stolen, taken and carried away from a motor truck in interstate commerce in the Southern District of New York, knowing the said goods to have been stolen and unlawfully taken and carried away from said motor truck. (Title 18, U.S. Code, Sections 659 and 2.); conspiracy so to do. (Title 18, U.S. Code, Section 371.)**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

NINE (9) MONTHS on count 1SENTENCE
OR
PROBATION
ORDER

Imposition of sentence on counts 3 and 5 is suspended. Defendant is placed on probation for a period of **THREE (3) YEARS**, on each count, to commence upon expiration of confinement, subject to the standing probation order of this Court.

Probation on counts 3 and 5 to run concurrently with each other.

Bail fixed at \$10,000.00 pending appeal.

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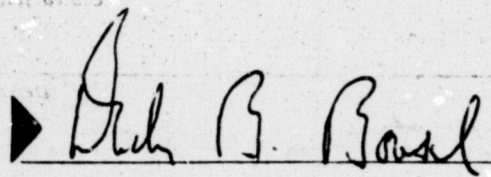
In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

MITMENT
OMMEN-
ATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

ED BY
J U.S. District Judge
J U.S. Magistrate



Dudley B. Bonsal

Date July 14, 1975

UNITED STATES DISTRICT COURT

United States of America,
Plaintiff,

vs.

Charles Coppers, A/K/A "C.J.",
Leon Rogers, Michael Marciano,
Thomas Carroll, and Vincent
McCluskey,
Defendants

Docket Number 402 75 Cr. 50002 (DBB)

Honorable Dudley B. Bonsal
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that Michael Marciano

appeals to
the United States Court of Appeals for the Second Circuit from the XX Judgment order
(specify) _____ entered in this action on July 14, 1975
(Date)

KENNETH R. CLAUDAT
(Counsel for Appellant)

Date July 14, 1975

Address 574 Newark Avenue
Jersey City, N. J. 07306

To: M. MARCIANO; 1088 STANWELL LANE
SEACAUCUS, NJ,

N. FIGEROA 1 ST. ANDREWS PLAZA
Phone Number 201-420-0858

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

▶ QUESTIONNAIRE

☒ I am ordering a transcript
☐ I am not ordering a transcript

Reason:

☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

▶ TRANSCRIPT ORDER

Prepare transcript of
☐ Pre-trial proceedings
☒ Trial
☐ Sentence
☐ Post-trial proceedings

▶ DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature Kenneth R. Claudat

DATE 7/15/75

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

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